DALIP KAUR GURBUX SINGH

v.

PEGAWAI POLIS DAERAH (OCPD), BUKIT MERTAJAM & ANOR.

SUPREME COURT, KUALA LUMPUR
HASHIM YEOP SANI CJ (MALAYA)
HARUN HASHIM SCJ
MOHD. YUSOFF MOHAMED SCJ
[SC CIVIL APPEAL NO. 02-442-1991]
8 NOVEMBER 1991

CIVIL PROCEDURE: *Conversion to Islam - Subsequent alleged renunciation - Whether High Court or Syariah Court has jurisdiction - Amendment to Federal Constitution - Findings of Fatwa Committee - Whether binding on parties - Proper forum to decide issue of whether deceased was a Muslim - Federal Constitution, Article 121(1A) - Kedah Administration of Muslim Law Enactment 1962, ss. 37(1), (4), 139, 140, 141 - Perak Administration of Muslim Law Enactment 1965, s. 146(2).*

ISLAMIC LAW: *Conversion to Islam - Subsequent alleged renunciation by deed poll - Genuineness of deed poll - Rebaptisement as Sikh - Conduct not conforming to Islamic faith - Whether apostate - Findings of Fatwa Committee - Whether binding on parties - Proper forum to decide issue of whether deceased was a Muslim - Federal Constitution, Article 121 (1A) - Kedah Administration of Muslim Law Enactment 1962, ss. 37(1), (4), 139, 140, 141 - Perak Administration of Muslim Law Enactment 1965, s. 146(2).*

The appellant, who was the mother of the deceased G, sought declarations firstly, that her son, at the time of his death, was not a Muslim and/or had renounced the Islamic faith and secondly that she was entitled to claim the body of the deceased from the District Hospital Mortuary, Bukit Mertajam.

The deceased converted to Islam on 1 June 1991 before the District Kadi of Kulim and the conversion was duly registered with the Majlis Agama Islam, Kedah in accordance with s. 139 of the Administration of Muslim Law Enactment 1962 of Kedah (the Kedah Enactment).

The appellant contended that subsequent to the conversion and before his death G by a deed poll on 9 September 1991 renounced the Islamic faith and resumed the practice of the Sikh faith, that G was rebaptised by a Sikh priest at a Sikh temple in Kulim about a month before his death and that G had regularly attended the congregation at the Sikh Temple thereafter.

The learned Judicial Commissioner concluded that the signature on the deed poll was not G's. He also rejected the evidence of the Sikh priest and that of G's brother with regard to the rebaptism and the congregation at the Sikh temple.

The appellant appealed and the Supreme Court remitted the case to the High Court for the learned Judicial Commissioner to refer certain questions of Islamic law to the Fatwa Committee under s. 37 of the Kedah Enactment.

After receiving the fatwa from the Fatwa Committee, which found *inter alia*, that a convert who executes a deed poll renouncing Islam is an apostate, the learned Judicial Commissioner confirmed his earlier finding and decision.

On appeal, the issues were:

(1) whether the learned Judicial Commissioner was correct in not allowing the case to be reopened after receiving the *fatwa* from the Fatwa Committee and

(2) the existence or otherwise of a genuine deed poll, which was relevant to the main issue of whether the deceased had effectively renounced Islam during his lifetime.

Held: (Per Hashim Yeop A. Sani CJ (Malaya) and Harun M. Hashim SCJ):

[1] There is no provision in the Kedah Enactment for converts to leave Islam. Clear provisions should be incorporated in all the State Enactments to avoid difficulties of interpretation by the civil Courts, especially in view of the amendment to Article 121 of the Federal Constitution which removed the jurisdiction of the civil Courts in relation to matters within the jurisdiction of the Syariah Courts. However, Article 121 (1A) of the Federal Constitution did not take away the jurisdiction of the civil Courts to interpret any written laws of the States enacted for the administration of Muslim law.

[2] The questions which were referred to by the trial Judge to the Fatwa Committee were agreed to by all the parties concerned and the direction to refer the questions to the Fatwa Committee were given by the Supreme Court to the trial Judge for the trial Judge to apply the fatwa to the facts as found by him. Therefore the trial Judge was perfectly correct in not allowing the case to be reopened.

[3] The trial Judge correctly applied the test of proof on the balance of probabilities and he had considered all the evidence before him including the sequence of events which he had set out in his judgment. The findings of fact made by the trial Judge cannot be said to be against the weight of evidence. This appellate Court would not like to interfere with the findings of the trial Judge who saw and heard the witnesses and made an assessment on the credibility and weight of evidence before him. He therefore had not misdirected himself in law or in fact.

(Per Mohd. Yusoff Mohamed SCJ):

[4] The issue of whether a person was a Muslim or had renounced the faith of Islam before death, cannot be determined by a simple application of facts as has been found by the learned Judicial Commissioner on the basis of veracity and relevancy of evidence according to civil law. Such a serious issue would need consideration by eminent jurists who are properly qualified in the field of Islamic jurisprudence. The only forum qualified to do so is the Syariah Court.

[5] As a result of the new Article 121 (1A), the issue in the present case is a matter which the Syariah Court had to determine.

[6] Section 37(4) of the Kedah Enactment has been overtaken and superseded by Article 121(1A) of the Federal Constitution and therefore, the request by appellant's Counsel for this Court to direct the learned Judicial Commissioner to refer the matter for a ruling by the Fatwa Committee under the impugned section of the Enactment is not tenable.

[Appeal dismissed with costs.]

[**Bahasa Malaysia** Translation of Headnote]

PROSEDUR SIVIL: *Pemelukan agama Islam - Dakwaan penolakan melalui suratikatan pol - Sama ada Mahkamah Tinggi atau Mahkamah Syariah mempunyai bidang kuasa - Pindaan Perlembagaan Persekutuan - Pendapat Jawatankuasa Fatwa - Sama ada mengikat semua pihak yang terlibat - Forum yang betul untuk memutuskan soal sama ada simati seorang Islam - Enakmen Pentadbiran Undang-undang Islam Kedah 1962, ss. 37(1),(4),139, 140, 141 - Enakmen Pentadbiran Undang-undang Islam Perak 1975, s. 146(2) - Perlembagaan Persekutuan, Perkara 121 (1A).*

UGAMA: *Pemelukan agama Islam - Pendakwaan penolakan melalui suratikatan pol - Kesahihan kelakuan yang tidak mengikut agama Islam - Dibaptisekan semula sebagai seorang Sikh - Sama ada murtad - Pendapat Jawatankuasa Fatwa - Sama ada mengikat semua pihak - Forum yang betul untuk memastikan sama ada simati seorang Islam - Enakmen Pentadbiran Undang-undang Islam Kedah 1962, ss. 37(1),(4),139, 140 & 141 - Enakmen Pentadbiran Undang-undang Islam Perak 1975, s. 146(2) - Perlembagaan Persekutuan, Perkara 121 (1A).*

Perayu, ibu kepada simati G, memohon satu deklarasi, pertamanya, bahawa pada masa kematiannya, G bukan seorang Islam dan/atau telah menolak agama Islam dan keduanya, bahawa perayu berhak untuk menuntut mayat G dari Bilik Mayat Hospital Daerah Bukit Mertajam.

G telah memeluk agama Islam pada 1 Jun 1991 di hadapan Kadi Daerah Kulim dan pemelukan agama tersebut telah didaftarkan dengan Majlis Agama Islam, Kedah selaras dengan s. 139 Enakmen Pentadbiran Undang-undang Islam Kedah 1962 (Enakmen Kedah).

Perayu menghujah bahawa selepas pemelukan agama Islam dan sebelum kematiannya, G telah membuat satu suratikatan pol (deed poll) pada 9 September 1991 menolak agama Islam dan kembali menganut agama Sikh, bahawa G telah dibaptiskan semula oleh sami Sikh di kuil Sikh di Kulim sebulan sebelum kematiannya dan bahawa G telah menjalankan kewajipan agamanya di kuil Sikh itu.

Pesuruhjaya Kehakiman yang arif telah memutuskan bahawa tandatangan dalam suratikatan pol itu bukan tandatangan G. Beliau juga menolak keterangan sami Sikh dan abang G berkaitan dengan pembaptisan semula G dan kehadirannya di kuil Sikh.

Perayu telah merayu dan Mahkamah Agung telah menghantar kes ini ke Mahkamah Tinggi supaya Pesuruhjaya Kehakiman boleh merujuk beberapa soalan berhubung dengan agama Islam kepada Jawatankuasa Fatwa di bawah s. 37 Enakmen Kedah.

Setelah menerima fatwa daripada Jawatankuasa Fatwa yang berpendapat, antara lain, bahawa seorang yang memeluk agama Islam yang kemudiannya menolak agama Islam melalui suratikatan pol adalah murtad. Seterusnya, Pesuruhjaya Kehakiman telah mengesahkan keputusan awalnya.

Isu-isu yang dibangkitkan dalam rayuan ini adalah:

(a) sama ada Pesuruhjaya Kehakiman membuat keputusan yang betul apabila beliau tidak membenarkan kes itu dibuka semula setelah menerima fatwa dari Jawatankuasa Fatwa dan

(b) kewujudan atau sebaliknya, satu suratikatan pol yang benar, yang seterusnya adalah isu yang relevan kepada soal sama ada G telah dengan sahnya menolak agama Islam semasa hayatnya.

Diputuskan: (Hashim Yeop A. Sani HB (Malaya) dan Harun M. Hashim HMA)

[1] Enakmen Kedah tidak mempunyai peruntukan mengenai mualaf (converts) yang ingin menolak agama Islam. Peruntukan yang jelas harus digabungkan dalam semua Enakmen negeri-negeri untuk mengelak kesulitan tafsiran oleh Mahkamah sivil, terutamanya memandangkan pindaan kepada Perkara 121 Perlembagaan Persekutuan, yang telah menarik balik bidang kuasa Mahkamah sivil berhubung dengan perkara-perkara yang melibatkan perkara-perkara yang melibatkan bidang kuasa Mahkamah Syariah. Walau bagaimanapun, Perkara 121 (1A) Perlembagaan Persekutuan tidak menarik balik bidang kuasa Mahakamah sivil untuk mentafsirkan sebarang undang-undang tertulis yang telah dibuat oleh negeri-negeri untuk pentadbiran undang-undang Islam.

[2] Soalan-soalan yang telah dirujuk oleh Hakim perbicaraan kepada Jawatankuasa Fatwa telah dipersetujui oleh semua pihak yang terlibat dalam kes ini. Mahkamah Agung juga telah memberi arahan kepada Hakim perbicaraan untuk merujuk soalan-soalan tersebut kepada Jawatankuasa Fatwa supaya Hakim perbicaraan boleh memakai fatwa tersebut kepada fakta-fakta kes ini. Oleh sebab itu, Hakim perbicaraan telah membuat keputusan yang betul apabila beliau menolak permohonan untuk membuka kes ini.

[3] Hakim perbicaraan telah dengan betulnya memakai ujian bukti di atas imbangan kebarangkalian dan telah mempertimbangkan semua keterangan yang telah ditimbulkan, termasuk rangkaian peristiwa yang terdapat dalam keputusan beliau. Pendapat Hakim perbicaraan tidak boleh dianggap sebagai bercanggah dengan timbangan keterangan. Mahkamah rayuan tidak akan mengganggu pendapat Hakim perbicaraan yang telah melihat dan mendengar saksi-saksi, dan yang telah membuat penilaian mengenai kredibiliti dan timbangan keterangan. Oleh sebab itu, beliau tidak mengambil pandangan yang salah sama ada dalam undang-undang atau fakta.

(Mohd. Yusoff Mohamed HMA)

[4] Isu sama ada seseorang itu seorang Islam atau sama ada ia telah menolak agama Islam sebelum kematiannya, tidak boleh ditentukan dengan hanya memakai fakta-fakta seperti yang telah diputuskan oleh Hakim perbicaraan, atas sebab kebetulan atau relevannya keterangan menurut undang-undang sivil. Isu yang serius seperti ini memerlukan pertimbangan oleh pakar perundangan yang berkelayakan dalam bidang falsafah undang-undang Islam. Forum yang berkelayakan berbuat demikian adalah Mahkamah Syariah.

[5] Perkara 121(1A) yang baru, telah mengakibatkan isu dalam kes ini sebagai satu perkara yang termasuk dalam bidang kuasa Mahkamah Syariah.

[6] Seksyen 37(4) Enakmen Kedah telah digantikan oleh Perkara 121 (1A) Perlembagaan Persekutuan dan oleh itu, permohonan Peguam perayu supaya Mahkamah Agung mengarah Pesuruhjaya Kehakiman untuk merujuk perkara ini kepada Jawatankuasa Fatwa di bawah seksyen yang dicabar itu tidak boleh dipertahankan.

[Rayuan ditolak dengan kos.]

Cases referred to:
Ng Wan Chan v. Majlis Ugama Islam Wilayah Persekutuan & Anor. [1991] 3 CLJ (Rep) ***328***
PP v. Mohamed Kassim bin Yatim [1977] 1 MLJ 64 ***(cit)***

Legislation referred to:
Federal Constitution, art. 121(1A)
Administration of Muslim Law Enactment (Kedah) 1962, ss. 37(1), (4), 139, 140, 141
Administration of Muslim Law Enactment (Perak) 1965, s. 146(2)

Other source referred to:
The Judgment of Islam on the Crimes of Salman Rushdie by Prof. Dr. Ala'ul Deen Kharroufah

For the appellant - Karpal Singh (N. Shanmugam & Balwant Singh Sidhu with him); M/s.Karpal Singh & Co.
For the 1st respondent - Haliza Aini bt. Dato' Othman, FC
For the 2nd respondent - Hasan b. Lah, Legal Adviser

JUDGMENT

Hashim Yeop Sani CJ (Malaya):

This appeal arose from the dismissal by the High Court Penang on 16 October 1991 of an application by the appellant for a declaration that her son, Gurdev Singh s/o Guruvak Singh (deceased) was at the time of his death on 3 October 1991 not a Muslim and/or had renounced the Islamic faith and also for the consequential declaration that she was entitled to claim the body of the deceased from the District Hospital mortuary, Bukit Mertajam.

The deceased was at the time of his death about 23 years old, born a Sikh and brought up in the Sikh faith. He had been living with his mother (the appellant) in the District of Kulim, in the State of Kedah. His body was found on 3 October 1991 at Jalan Mengkuang/Berapit, Kubang Semang, Bukit Mertajam. Prior to his death he was a supervisor at a factory in Kulim. The deceased had a girl friend (or fiancee) a Malay girl named Siti Noraini working at the same factory.

It is not disputed that the deceased converted to Islam on 1 June 1991 before the District Kadi of Kulim. It is also not disputed that the conversion was duly registered with the Majlis Agama Islam, Kedah in accordance with s. 139 of the Administration of Muslim Law Enactment 1962 of Kedah. In her originating summons the appellant contended that subsequent to the conversion and before his death the deceased had by a deed poll on 9 September 1991 renounced the Islamic faith and resumed the practice of the Sikh faith. It was also alleged that the deceased was rebaptised by a Sikh priest at a Sikh temple in Kulim about a month before his death and that the deceased had regularly attended the congregation at the Sikh temple thereafter. It was also contended that the deceased continued to eat pork and had not been circumcised.

In his written judgment the learned Judicial Commissioner set out the chronological events material to the case as follows:

1989	Deceased and Siti Noraini working in the same factory became acquainted.
1 June 1991	Deceased embraced Islam (not disputed).
6 September 1991	Deceased assaulted Siti Noraini in front of the factory because Siti Noraini went out with another man, a Chinese, by the name of Jeffrey. That evening deceased took Siti Noraini to a restaurant together with one Krishna Kumar.
7 September 1991	Deceased took Siti Noraini to Penang.
9 September 1991	The date of the alleged deed poll.
28 September 1991	Deceased and Siti Noraini were engaged at her house. Deceased as well as his brother (Balwinder Singh) went to the ceremony. Deceased gave a ring to Siti Noraini. According to Siti Noraini in her evidence, the wedding was scheduled to take place on 25 November 1991.

2 October 1991	Deceased came to the house where Siti Noraini was staying at 11 p.m. and sent her to the factory to work. That was the last time that Siti Noraini saw the deceased.
3 October 1991	At 6.45 a.m. the police was informed of the deceased's body.

At the conclusion of the hearing before the learned Judicial Commissioner, he came to the conclusion that the signature on the deed poll was not that of the deceased. He also rejected the evidence of the Sikh priest and that of the deceased's brother with regard to the rebaptism and the congregation at the Sikh temple.

The appellant appealed. At the hearing of the appeal this Court remitted the case to the High Court for the learned Judicial Commissioner to refer certain questions of Islamic law that arose to the Fatwa Committee under s. 37 of the Enactment. The High Court sat again on 26 October 1991 for the purpose of referring the questions.

After receiving the *fatwa* from the Fatwa Committee the learned Judicial Commissioner sat on 28 October 1991 and confirmed his earlier findings and decision. Thus the present appeal.

The questions referred to the Fatwa Committee and the answers are reproduced below:

S: Adakah seseorang yang beragama Islam yang membuat peristiharan melalui deed poll bahawa dia menolak agama Islam terkeluar daripada agama Islam?

J: Jika seseorang yang beragama Islam yang membuat peristiharan melalui deed poll bahawa dia menolak agama Islam maka adalah ia terkeluar daripada Islam (Murtad).

S: Adakah seseorang yang beragama Islam yang pergi bersembahyang di kuil Sikh mengikut cara sembahyang agama Sikh terkeluar daripada agama Islam?

J: Seseorang yang beragama Islam yang pergi bersembahyang di kuil Sikh mengikut cara sembayang agama Sikh juga terkeluar daripada agama Islam (Murtad).

S: Adakah seseorang yang beragama Islam yang menjalani upacara memeluk agama Sikh terkeluar daripada agama Islam?

J: Seseorang yang beragama Islam yang menjalani upacara memeluk agama Sikh adalah terkeluar daripada Islam (Murtad). Namun begitu untuk menentukan sama ada seseorang itu terkeluar daripada Islam (Murtad) atau tidak hendaklah terlebih dahulu disabitkan oleh mana-mana Mahkamah Syariah dan dihukum ia sebagai terkeluar daripada Islam (Murtad) jika tidak ada disabitkan oleh mana-mana Mahkamah Syariah dan dihukum maka seseorang itu tetap di dalam agama Islamnya.

S: Adakah seseorang yang beragama Islam yang memakan daging babi terkeluar daripada agama Islam?

J: Seseorang yang beragama Islam yang memakan daging babi tiada terkeluar daripada agama Islam.

S: Adakah seseorang yang bukan beragama Islam yang kemudiannya memeluk agama Islam tetapi tidak berkhatan sehingga dia meninggal dunia, mati sebagai seorang yang bukan beragama Islam, semata-mata kerana dia tidak berkhatan?

J: Seseorang memeluk agama Islam yang tiada berkhatan sah Islamnya.

Pada pendapat Jawatankuasa Fatwa Majlis Agama Islam Negeri Kedah Darulaman yang bersidang pada 27 Oktober 1991 bahawa berhubung Gurdev Singh A/L Guruvak Singh, Kad Pengenalan: A 1028701 ia adalah seorang Islam dengan sahnya kerana telah sabit keIslamannya dengan ia mengucap dua kalimah Shahadat di hadapan Kadi Daerah Kulim, Negeri Kedah

Darulaman bertarikh 1 Jun 1991 seperti yang tercatit di dalam borang ikrar orang yang masuk Islam bil. 5/91 dan berkekalan Islamnya kerana tidak ada hukuman dari mana-mana Mahkamah Syariah Negeri Kedah ini yang mensabitkan ia terkeluar daripada Islam.

After hearing Mr. Karpal Singh's submission the issues to be determined in this appeal can in fact be reduced to only two points, namely:

(1) whether the learned Judicial Commissioner was correct in not allowing the case to be reopened after receiving the *fatwa* from the Fatwa Committee;

(2) the existence or otherwise of a genuine deed poll.

The deed poll is crucial to determine whether the deceased died a Muslim. The relevant part of the *fatwa* on this point states in effect that if a Muslim executes a deed poll renouncing Islam he becomes a *"murtad"* (apostate).

Under the Kedah Enactment only three provisions deal with matters relating to converts to Islam, namely ss. 139, 140 and 141. These provisions read:

139. The Majlis shall maintain a register of the names of all persons converted to the Muslim Religion within the State, together with such particulars in respect of their conversion as may be prescribed by rule.

140. No person shall be converted to the Muslim Religion otherwise than in accordance with Muslim Law and the provisions of this Enactment or any rules made thereunder.

141. Any Muslim who converts any person to the Muslim Religion shall as expeditiously as possible report such conversion to the Majlis with all necessary particulars.

There is no provision in the enactment for converts to leave Islam. There was such a provision in s. 146(2) of the Perak Enactment (the Administration of Muslim Law Enactment 1965) which was however repealed in 1975. The original provision in the Perak Enactment reads:

146(2) **Semua orang Islam ada-lah terikat dengan Undang - undang ini,** dan sa-kira-nya mana - mana orang Islam keluar daripada Ugama Islam maka hendaklah ia menyatakan kepada Mahkamah akan keputusannya itu dan Mahkamah itu hendak-lah mengishtiharkan perkara itu.

Only the words emphasised remain after the repeal. Before the repeal any convert who wished to leave Islam could have the matter certified by the Syariah Court.

We are of the view that clear provisions should be incorporated in all the State Enactments to avoid difficulties of interpretation by the civil Courts. This is particularly important in view of the amendment to Article 121 of the Federal Constitution made by Act A704 of 1988. The new Clause 1A of Article 121 of the Constitution effective from 10 June 1988 has taken away the jurisdiction of the civil Courts in respect of matters within the jurisdiction of the Syariah Courts. But that clause does not take away the jurisdiction of the civil Court to interpret any written laws of the States enacted for the administration of Muslim law. One of the opinions given in the *fatwa* of the Fatwa Committee in this case was that a convert who executes a deed poll renouncing Islam is a *murtad* (apostate). Of course this opinion is valid only for the State of Kedah. If there are clear provisions in the State Enactment the task of the civil Court is made easier when it is asked to make a declaration relating to the status of a person whether such person is or is not a Muslim under the Enactment. A clear provision can for example be in the form of a provision imposing obligation on the relevant authority to keep and maintain a register of converts who have executed a deed poll renouncing Islam.

As regards the first issue, the questions which were referred to by the trial Judge to the Fatwa Committee were agreed to by all parties concerned and the direction to refer the questions to the Fatwa Committee was given by this Court to the trial Judge for the trial Judge to apply the *fatwa* to the facts as found by him. Therefore the trial Judge was perfectly correct in not allowing the case to be reopened.

As regards the second issue, the trial Judge applied the test of proof on the balance of probabilities and he stated this frequently in his written judgment. Although it was an originating summons the case proceeded as a trial on the issues. A number of witnesses gave evidence.

Mr. Karpal Singh complained that the learned Judicial Commissioner should have accepted the affidavit of the Sikh priest relating to the alleged "baptism" of the deceased. But it must be noted that the trial Judge also saw and heard the evidence of Siti Noraini, the fiancee of the deceased and who was one of the last persons who saw the deceased before he was found dead the next morning. As the trial Judge said, it must not also be forgotten that Siti Noraini had nothing to gain by not telling the truth.

The trial Judge also heard the evidence of Balwinder Singh, brother of the deceased and made his own assessment of the latter's testimony at length in his judgment.

Mr. Karpal Singh also complained that the learned Judicial Commissioner should not have relied on the evidence of the document examiner to come to a conclusion that the deed poll was a forgery. The document examiner who gave evidence stated that after examining ten specimen signatures and the signature on the deed poll and the signature on the form (the Borang Ikrar under the Enactment), he found that the signature on the deed poll did not originate from the writer of the signatures on the other documents. It is trite law that evidence by a handwriting expert should be viewed with caution as it is only an opinion evidence. But such evidence is entitled to be given proper consideration and weighed in the context of the other evidence available to the Court. See also *PP v. Mohamed Kassim bin Yatim* [1977] 1 MLJ 64. In this case the testimony of the document examiner was not the only evidence relied on by the trial Judge to come to his conclusion. It is clear in his judgment that he considered all the evidence before him including the sequence of events which he had set out in his judgment. He found it difficult to accept the story submitted on behalf of the appellant as being highly probable. At the conclusion of the hearing the trial Judge made a number of firm findings of fact which cannot be said to be against the weight of evidence.

As an appellate Court we would not like to interfere with the findings of fact of the trial Judge who saw and heard the witnesses and made an assessment on the credibility and weight of evidence before him. He did not misdirect himself in law or in fact.

We accordingly dismissed the appeal with costs. Deposit to respondent to account of taxed costs.

Mohd. Yusoff Mohamed SCJ:

I have had the benefit of reading the draft grounds of judgment of the learned Tan Sri Datuk Hashim Yeop A. Sani CJ (Malaya). I would come to the same conclusion in dismissing this appeal for different reasons.

The question foremost to be determined is whether the deceased had effectively renounced the Islamic faith during his lifetime.

The evidence that have been advanced to the Court was that the deceased has been baptised by a Sikh priest at his temple, he had executed a deed poll renouncing the Islamic faith and that his conduct did not conform to a person who professed to be a Muslim.

Quoting from a book by Prof. Dr. Ala'ul Deen Kharroufah entitled *("The Judgment of Islam on the Crimes of Salman Rushdie")*, Encik Karpal Singh on behalf of the appellant said that pronouncing adherence to Islam should not be accepted from hypocrites and that actions on the part of the deceased implied disbelief from his own conviction. The learned Counsel quoted from p. 54 of the book to show that the deceased had become an apostate:

> Apostasy according to the Shafei school is cutting one's adherence to Islam by intending to do so, by saying something which would cause one to fall into disbelief, or by action. No difference here is to be observed between whether this was done with the intention of sarcasm and satire or through conviction.
>
> Apostasy is the grossest form of disbelief and merits the heaviest punishment. It abrogates the good effect of one's good deeds if the apostate does not repent and return to Islam before death. An apostate's blood is to be spilled lawfully on account of his gross crime.
>
> In evidence of their opinion, Shafeis provide the Quar'anic verse that whoever leaves Islam and dies a disbeliever will lose all his deeds and reside in hell.

The learned Counsel also cited *Ng Wan Chan v. Majlis Ugama Islam Wilayah Persekutuan & Anor* [1991] 3 CLJ (Rep) 328 at p. 333 wherein the learned Judge considered the conduct of the deceased in that case (almost similar as here) as a determining factor in deciding that the deceased there was not a Muslim. The learned Judge in that case amplified his grounds in holding that:

> *Murtad* (apostasy) means a Muslim who renounces his religion (Islam) either by clearly declaring that he is no longer a Muslim or by his conduct which clearly shows that he is not a Muslim.

In the present case the learned Judicial Commissioner in declaring that the deceased was a Muslim observed in his judgment that:

> Tetapi tidak makan babi bukan syarat terdahulu (condition precedent) menjadi Islam. Kedudukannya adalah seperti seorang Hindu yang memakan daging lembu, seorang Kristian berzina atau, jika tidak silap saya, seorang Sikh yang menghisap rokok. Perbuatan itu tidak menjadikan seseorang itu tidak beragama Hindu, Kristian atau Sikh, mengikut yang berkenaan.

He further observed:

> Alegasi yang lebih serius ialah bahawa si mati bersembahyang di kuil Sikh dan dibaptisekan sebagai seorang yang beragama Sikh. Jika salah satu perbuatan ini terbukti tentulah dia telah murtad.

It is apparent from the observations made by the learned Judicial Commissioner that the determination of the question whether a person was a Muslim or had renounced the faith of Islam before death, transgressed into the realm of syariah law which needs serious considerations and proper interpretation of such law. Without proper authority to support his contention it is not sufficient to say whether there is or there is not a condition precedent for a person to become a Muslim; or that if the deceased were proved to have had said his prayers at a Sikh temple he was definitely an apostate.

The present question, in my view, cannot be determined by a simple application of facts as has been found by the learned Judicial Commissioner on the basis of veracity and relevancy of evidence according to civil law. Such a serious issue would, to my mind, need consideration by eminent jurists who are properly qualified in the field of Islamic jurisprudence.

In this view it is imperative that the determination of the question in issue requires substantial consideration of the Islamic law by relevant jurists qualified to do so. The only forum qualified to do so is the Syariah Court.

At the end of his argument before this Court on 21 October 1991, Encik Karpal Singh conceded that our civil Court is not qualified to determine this question in issue but urged that the Court directs the learned Judicial Commissioner to refer the matter to the Chairman of the Fatwa Committee under s. 37(1) of the Kedah Administration of Muslim Law Enactment 1962, based on the facts as found by the learned Judicial Commissioner for ruling by the Committee under s. 37(4) of the Enactment.

In my view Encik Karpal Singh's suggestion is not feasible. The amendment to Article 121 of the Federal Constitution which came into effect on 10 June 1988 and the provision of the new Article 121(1A) has taken away the jurisdiction of the High Court in respect of any matter within the jurisdiction of the Syariah Courts and this is such a matter which the Syariah Court has to determine.

Further, I am also of the opinion that the provision in s. 37(4) of the Kedah Administration of Muslim Law Enactment 1962 has been overtaken and superseded by the constitutional amendment in Article 121(1A) of the Federal Constitution and in that view the request by Encik Karpal Singh for this Court to direct the learned Judicial Commissioner to refer the matter for a ruling by the Fatwa Committee under the impugned section of the enactment is not tenable.

However, by consent of all the parties, this Court at its sitting on 21 October 1991, had directed the learned Judicial Commissioner to refer to the Fatwa Committee of the State of Kedah certain questions of Islamic Law that arose in the proceedings for final determination of this suit by the learned Judicial Commissioner. The questions that were framed and referred to the Committee were agreed to by the parties concerned. The learned Judicial Commissioner after receiving the *fatwa* from the Fatwa Committee confirmed his earlier findings and decisions. On this basis, in my view, Encik Karpal Singh's application to reopen the case on different issues cannot be allowed.

I am also of the view that since the *fatwa* was sought from the Committee, clear directions from the Committee should be adhered to.

The *fatwa* issued by the Committee is clear in what it says:

> sama ada seseorang itu terkeluar daripada Islam (Murtad) atau tidak hendaklah terlebih dahulu disabitkan oleh mana-mana Mahkamah Syariah dan dihukum ia sebagai terkeluar daripada Islam (Murtad) jika tidak ada disabitkan oleh mana-mana Mahkamah Syariah dan dihukum maka seseorang itu tetap didalam agama Islamnya.

It further states that:

> berkekalan Islamnya kerana tidak ada hukuman dari mana-mana Mahkamah Syariah Negeri Kedah ini yang mensabitkan ia terkeluar daripada Islam.

For these reasons I would also dismiss this appeal with costs.

Also found at [1991] 3 CLJ 2768